

Thomas admits that during his career, and in his capacity as a Senior Vice President, upon adequate consultation with and advice from an attorney, he signed documents that may or may not have had legal consequence. Thomas denies the remaining allegations contained in Paragraph No. 12.

13. As recently as May 17, 2016, Thomas, through counsel, asserted his belief that the Trust is invalid and unenforceable.

ANSWER: Thomas admits the allegations contained in Paragraph No. 13.

WHEREFORE, Defendant, THOMAS A. PAGANO, respectfully requests this Honorable Court enter judgment in his favor and; for any further relief as this Court deems just and necessary.

COUNTERCLAIM FOR REFORMATION

Defendant/Counter-Plaintiff, Thomas A. Pagano, by and through his attorneys, ICE MILLER LLP, for his Counterclaim for Reformation, states as follow:

1. Thomas A. Pagano (herein "Thomas"), is a resident of Burr Ridge, Cook County Illinois. Thomas is the grantor and primary beneficiary of the Pagano Trust.
2. Defendant Frank Bastian (herein "Bastian"), as an attorney with the firm of Lichstinn & Hansel, S.C. in Milwaukee, Wisconsin. Bastian is both the drafting attorney for the Pagano Trust, and the currently acting Trustee of the Pagano Trust.
3. Plaintiff/Counter-Defendant, Louis V. Pagano II (herein "Louis"), is a resident of Westmont, Illinois and the only son of Thomas.
4. In February 2014, Thomas became engaged to his current wife, Karen Pagano (herein "Karen").

5. Shortly thereafter, Louis demanded that Karen and Thomas sign a prenuptial agreement. Karen at all times refused to sign a prenuptial agreement.
6. On information and belief, Louis, together with his friend Dallas Fox, sought out and identified Bastian to draft a trust for Louis' ultimate benefit.
7. Dallas Fox is a personal friend of Louis, and a wealth management advisor at Merrill Lynch. Dallas Fox and Merrill Lynch manage some of the assets held in the Pagano Trust.
8. Prior to Bastian's drafting of the Pagano Trust, Thomas only spoke with Bastian by telephone on two occasions.
9. Prior to the drafting of the Pagano Trust, Thomas and Bastian agreed that during Thomas' lifetime, he would have access to all of the income and principal of the Pagano Trust.
10. Thomas intended that the Pagano Trust would provide for him, his spouse, and his and her family financially during his lifetime, and that he would retain control over the Pagano Trust assets.
11. Bastian drafted the Pagano Trust.
12. On or about December 8, 2014, Thomas signed the Pagano Trust at Dallas Fox's Merrill Lynch office.
13. The majority of Thomas' assets were transferred into the Pagano Trust, including all of his shares [REDACTED] in a company known as Ferrara Candy, and his Merrill Lynch account (excepting [REDACTED]). Thomas' only currently held assets outside of the Pagano Trust are his personal residences in Burr Ridge, Illinois and Florida, and some cash.

14. The Pagano Trust provides that Thomas shall receive all of the income of the Trust on at least a quarterly basis (*see Pagano Trust, paragraph 5*), but is silent as to the distribution of any principal assets of the Trust.
15. The Pagano Trust nominates Bastian as the Trustee, and Dallas Fox as the Successor Trustee. The Pagano Trust also grants Dallas Fox the authority to select a successor trustee in the event that he is unable or unwilling to act as Successor Trustee. *See Pagano Trust, paragraph 8.*
16. Upon Thomas' death, the entire balance of the Pagano Trust shall distribute to Louis, if he survives Thomas. *See Pagano Trust, paragraph 6.*
17. Prior to drafting the Pagano Trust, Bastian and Thomas agreed that Thomas would retain access and control over both the income and the principal assets held in the Pagano Trust.
18. Despite this agreement between Thomas and Bastian, the Pagano Trust's terms do not provide Thomas with any access or control over the principal assets held in the Pagano Trust.
19. The Pagano Trust terms are silent as to the treatment of the Trust's principal assets.
20. The Pagano Trust, as a result of a mistake and as drafted by Bastian, fails to include any treatment of the principal assets of the Pagano Trust.
21. The Pagano Trust must be reformed to conform to the original agreement of Thomas and Bastian and the intention of Thomas as the grantor of the Pagano Trust.

WHEREFORE, Thomas Pagano requests this Honorable Court enter an Order reforming the Pagano Trust to conform to the original agreement of Thomas and Bastian, and to conform to the intentions of Thomas as grantor of the Pagano Trust, and for such further and other relief as this Court deems appropriate.

CROSS-CLAIM FOR ACCOUNTING

Defendant, Thomas A. Pagano, by and through his attorneys, ICE MILLER LLP, for his Cross-claim against Defendant Frank W. Bastian, as Trustee of the Pagano Irrevocable Family Trust dated December 8, 2014 (herein the "Pagano Trust"), states as follow:

22. Defendant/Cross-Plaintiff Thomas A. Pagano (herein "Thomas"), is a resident of Burr Ridge, Cook County Illinois. Thomas is the grantor and primary beneficiary of the Pagano Trust.
23. Frank Bastian (herein "Bastian"), is an attorney with the firm of Lichstinn & Hansel, S.C. in Milwaukee, Wisconsin. Bastian is both the drafting attorney for the Pagano Trust, and the currently acting Trustee of the Pagano Trust.
24. Thomas had no pre-existing professional or personal relationship with Bastian prior to Bastian's involvement in the drafting of the Pagano Trust.
25. Thomas did not seek Bastian's legal assistance in drafting the Pagano Trust.
26. On information and belief, either Louis Pagano and/or his friend Dallas Fox initiated contact with Bastian for the purposes of drafting the Pagano Trust.
27. Prior to Bastian's drafting of the Pagano Trust, Thomas only spoke with Bastian by telephone on two occasions.
28. Bastian drafted the Pagano Trust.
29. On or about December 8, 2014, Thomas signed the Pagano Trust.

30. Since December 8, 2014, Bastian is and has been the Trustee of the Pagano Trust.
31. Since December 8, 2014, Thomas is and has been the sole income beneficiary of the Pagano Trust.
32. Pursuant to the Illinois Trusts and Trustee Act, 760 ILCS 5/11, Bastian, as Trustee of the Pagano Trust, is required to, at least annually, provide income beneficiaries a current accounting showing the receipts, disbursements, and inventory of the trust estate.
33. Likewise, Paragraph 7(c) of the Pagano Trust requires the Trustee to "furnish written statements at least annually showing the itemized receipts and disbursements of income and principal of the Trust, and otherwise reflecting the condition thereof..." to Thomas.
34. Bastian has never provided Thomas with an annual accounting in conformance with the statute or as required by Paragraph 7(c) of the Pagano Trust.
35. Thomas demands that Bastian prepare and present an accounting for the Pagano Trust from December 8, 2014 to present.

WHEREFORE, Defendant/Cross-Plaintiff Thomas Pagano requests that this Honorable Court Order that Frank Bastian, Trustee of the Pagano Trust to prepare and present an accurate accounting for the Pagano Trust from December 8, 2014 to present, to award attorney fees incurred by Thomas Pagano to bring this action, and for such other and further relief as this Court deems necessary.